

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications)	WT Docket No. 00-48
)	
Petition for Rule Making Filed by Globe Wireless, Inc.)	RM-9499
)	
Amendment of the Commission’s Rules Concerning Maritime Communications)	PR Docket No. 92-257
)	

To: The Commission

PETITION FOR RECONSIDERATION OF MARITEL, INC.

MariTEL, Inc., by its counsel and pursuant to the provisions of Section 1.429 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby submits the following petition for reconsideration of the Sixth Report and Order in the Docket No. 92-257 proceeding.^{1/} In particular, MariTEL asks that the FCC reconsider that element of the Sixth Report and Order that adopts rules for the certification of automatic identification system (“AIS”) equipment.^{2/} The adoption of those regulations fails to take into consideration the detrimental impact that certification of AIS equipment, under the rules adopted, will have on MariTEL. MariTEL made information regarding the impact of the proposed rules available to the FCC, but the Commission improperly failed to consider that information. In any case, information subsequently presented to the FCC demonstrates that adoption of the AIS equipment

^{1/} *Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications; Petition for Rule Making Filed by Globe Wireless, Inc.; Amendment of the Commission’s Rules Concerning Maritime Communications, Second Report and Order, Sixth Report and Order, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 3120 (2004) (referred to respectively as “Second Report and Order,” “Sixth Report and Order,” and “Second FNPRM”).

^{2/} *Sixth Report and Order* ¶ 67.

certification rules is otherwise inconsistent with FCC regulations. Therefore, the FCC must reconsider the adoption of the AIS equipment certification rules.

I. BACKGROUND

MariTEL was the largest provider of VHF Public Coast (“VPC”) services in the United States and, through various predecessors in interest, provided ship-to-shore services for over forty (40) years. In 1999, and again in 2001, MariTEL actively participated in the FCC’s auctions of VPC station licenses.^{3/} As a result, MariTEL became the exclusive entity (except for site-specific incumbent licensees) authorized to operate on maritime VPC spectrum. MariTEL is an active participant in virtually all proceedings concerning the use of spectrum designated for maritime operations. In particular, MariTEL submitted comments in response to the Fourth Further Notice in the Docket No. 92-257 proceeding, the responses to which resulted in the Sixth Report and Order.

The Sixth Report and Order adopts regulations designed to govern the use of AIS devices in the United States. AIS devices were approved for use prior to the adoption of these rules pursuant to a 2002 Public Notice.^{4/} In particular, new rule provision 80.275 states that prior to the submission of a request for certification, an equipment manufacturer must secure concurrence from the United States Coast Guard that the equipment meets the provisions of Section 80.1101 of the FCC’s rules. Section 80.1101, in turn, at subsection (c)(12) lists

^{3/} “FCC Announces the Conditional Grant of 26 VHF Public Coast Station Licenses,” *Public Notice*, DA 99-195, 1999 FCC LEXIS 2251 (rel. May 21, 1999) (announcing that MariTEL was the winning bidder of nine VHF public coast licenses); “VHF Public Coast and Location and Monitoring Service Spectrum Auction Closes: Winning Bidders Announced,” *Public Notice*, DA 01-1433 (rel. June 15, 2001) (announcing that MariTEL was the winning bidder of seven inland VPC licenses).

^{4/} “Applications for Equipment Authorization of Universal Shipborne Automatic Identification Systems to be Coordinated with U.S. Coast Guard to Ensure Homeland Security,” *Public Notice*, DA 04-1499, 17 FCC Rcd 11983 (2002).

international specifications for AIS equipment.^{5/} Accordingly, the effect of these two rule provisions is to delegate to international regulatory agencies a determination of whether AIS equipment should be approved for use in the United States. This delegation has a devastating impact on MariTEL for two reasons. First, as the FCC itself has recognized, the international emission mask associated with AIS equipment is not as stringent as the FCC's mask for similar devices. Even more problematic, the international standards designed to measure compliance with the mask do not accurately do so. The FCC incorrectly ignored information provided to it that demonstrates this devastating impact. Finally, by adopting the international guidelines for AIS devices, the FCC has impermissibly inferred how it may act in a related rule making proceeding. Accordingly, MariTEL is pleased to have the opportunity to submit the following petition for reconsideration of the Sixth Report and Order.

II. DISCUSSION

A. The FCC Improperly Adopted Regulations that Will Cause Harmful Interference to MariTEL

In adopting AIS equipment certification requirements that are based on international regulations, the FCC has produced a devastating impact on MariTEL. As MariTEL has demonstrated, reliance on international equipment standards for AIS has resulted in two deleterious effects. First, and as the FCC itself has recognized, the international AIS emission mask standards are not as stringent as U.S. standards. Second, and more important, the international standards for measuring compliance with the emission mask requirements are flawed. That is, equipment may appear to satisfy the test process, but still not comply with the emission mask limits. As a result, operation of AIS equipment that successfully complies with the certification process will cause harmful interference to MariTEL's other channel operations

^{5/} 47 C.F.R. § 80.1011.

because of the lack of compliance with the FCC’s mask requirements (which, in turn, are more lax than U.S. standards applicable for other maritime data applications to begin with). MariTEL demonstrated this harmful interference to the FCC in its Supplemental Comments in the Docket No. 92-257 proceeding.^{6/} MariTEL reiterated those concerns in comments submitted in response to the National Telecommunications and Information Administration (“NTIA”) request to designate channels 87B and 88B for AIS operations.^{7/}

The Commission improperly failed to consider the evidence that MariTEL provided demonstrating this harmful interference. Yet, it is a bedrock principle of administrative law that an agency “must examine the relevant data and articulate a satisfactory explanation for its action.”^{8/} Although an agency “need not respond to every comment,” when it is presented relevant information “it must respond in a reasoned manner to ‘explain how the agency resolved any significant problems raised by the comments, and to show that how that resolution led the agency to the ultimate rule.’”^{9/} In the present case, the Commission was obliged to consider all “common and known or otherwise reasonable options” presented to it, and then to “explain any decision to reject such options.”^{10/} Its decision to completely ignore the relevant data supplied

^{6/} *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket 92-257, Supplemental Comments/Ex Parte Notice of MariTEL, Inc. (filed August 29, 2003).

^{7/} *Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B*, DA 03-3586, Comments of MariTEL at 15-17 (filed Dec. 1, 2003); *see also* “Interference Considerations of Simplex Operation 1371 AIS Technologies with Respect to MariTEL’s Spectrum, inCode Telecom Group, Inc. Report (presented Oct. 9, 2003), attached to *Wireless Telecommunications Bureau Seeks Comment on MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B*, DA 03-3586, Comments of MariTEL at 15-17 as Exhibit A.

^{8/} *Motor Vehicle Manufacturer’s Ass’n v. State Farm*, 463 U.S. 29, 43 (1983).

^{9/} *International Ladies’ Garment Workers’ Union v. Donovan*, 722 F.2d 795, 817-818 (D.C. Cir. 1983).

^{10/} *Id.*

by MariTEL in this proceeding clearly violated its duty to fairly consider all evidence and to explain its decision.

The fact that MariTEL submitted much of its supplemental technical data after the deadline for public comment is no rebuttal to this fact. Such *ex parte* submissions are common and accepted avenues for information to flow to the FCC, particularly in a non-adjudicatory setting such as this rule making.^{11/} The “serious questions of fairness” sometimes presented by *ex parte* contacts were not presented in this rule making since MariTEL submitted its primary Comments and Reply Comments on the record^{12/} and neither sought nor enjoyed “advantages not shared by all” through secret meetings.^{13/} Quite the opposite, fairness in this case requires a reconsideration of the Commission’s decision in light of the substantial factual issues raised by MariTEL but ignored by the Commission.

Even if the FCC may have properly ignored the information presented by MariTEL prior to the adoption of the Sixth Report and Order, it can no longer ignore the fact that there is substantial evidence that AIS equipment, which seemingly complies with the FCC’s emission mask requirements, will cause harmful interference to adjacent channel operations. MariTEL

^{11/} *Action for Children’s Television v. FCC*, 564 F.2d 458, 477-478 (D.C. Cir. 1977).

^{12/} MariTEL submitted timely Comments and Reply Comments in this proceeding. See *Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications*, WT Docket No. 00-48, Comments of MariTEL, Inc. (filed August 15, 2002); *Amendment of Parts 13 and 80 of the Commission’s Rules Concerning Maritime Communications*, WT Docket No. 00-48, Reply Comments of MariTEL, Inc., (filed September 16, 2002). Later in the proceeding, MariTEL provided additional technical data to the Commission that demonstrated the harmful interference that AIS equipment would have on its operations. MariTEL’s submission therefore cannot be considered an inexcusable “late filing,” particularly given the Commission’s openness to such information and classification of the proceeding as “permit but disclose” with respect to *ex parte* contacts. See *Sixth Report and Order and Second FNPRM* at ¶ 133.

^{13/} *Id.*

presented this information to the FCC in several proceedings.^{14/} Specific evidence of this harmful effect is provided at Exhibit A hereto which demonstrates emission mask measurements for FCC type accepted equipment. In particular, Exhibit A shows two specific AIS devices that seemingly met the FCC certification process, but nonetheless substantially exceed the FCC's adopted prescribed transmitter mask limits. Exhibit A further shows that the results of the certification process are completely unpredictable; the variation from the mask limits is not uniform across devices that pass the certification process. As Exhibit A demonstrates, the FCC's certification process for AIS devices has resulted in certification of devices which violate its own mask requirements. MariTEL believes that these two examples are only a small sample of the problem caused by the certification process. MariTEL believes that many, if not most, of the certified AIS devices in the United States violate the FCC's emissions mask. MariTEL therefore requests that the Commission review the rules that specify the AIS certification process, review the rules that contain the emission mask limits, and ensure that past and future certified equipment actually complies with those limits.

While MariTEL recognizes that the FCC will generally not consider subsequently developed information to support a petition for reconsideration, the Commission's assessment of

^{14/} See, e.g., Letter from Russell H. Fox, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for MariTEL, Inc. to Scot Stone, Assistant Chief, Public Safety and Critical Infrastructure Division, Federal Communications Commission at 1 (January 16, 2004) (*ex parte* filing in PR Docket No. 257 stating that the "the harmful interference that would be caused to MariTEL by the use of channel 87B by automatic identification systems ("AIS")"); Letter from Russell H. Fox, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for MariTEL, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (April 13, 2004) (*ex parte* filing in RM-10821, PR Docket No. 92-257, RM-10743 filing presentation noting the impact that AIS interference will have on MariTEL's operations); Letter from Russell H. Fox, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for MariTEL, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (May 7, 2004) (*ex parte* filing in RM-10821, PR Docket No. 92-257, RM-10743 noting the interference potential of AIS transmissions); Letter from Russell H. Fox, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Counsel for MariTEL, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (June 30, 2004) (*ex parte* filing in RM-10821, PR Docket 92-257, RM-10743 including letter to John Muleta regarding the interference potential associated with AIS devices).

that additional information is both permitted and required in this instance. On reconsideration, the FCC is permitted to consider new facts that have only recently become available.^{15/} As the FCC is aware, AIS carriage requirements only recently became mandatory, and AIS equipment only recently began to proliferate. Therefore, until now, it was impossible to determine how devastating the impact of AIS equipment that complies with the lax standard and flawed test processes would be on adjacent channel operations. However, now that AIS equipment has been approved for use and employed, that data is available, and the FCC must consider it in evaluating the propriety of its decision to permit the introduction of AIS equipment in the domestic market that both does not otherwise comport with FCC's rules and otherwise relies on flawed testing processes.

The Sixth Report and Order is similarly flawed because it fails to reconcile the FCC's own recognition that the international standards on which the AIS certification process is based is inconsistent with the FCC's rules. In particular, while the Sixth Report and Order adopted emission masks for Part 80 equipment, the FCC determined not to require devices certified for AIS operation to conform to these requirements.^{16/} The Commission recognized that emission masks act, in part, to prevent harmful interference, but it failed to adequately justify why the prevention of harmful interference was unimportant in the context of AIS devices. Instead, the FCC merely stated that it would not impose emission mask requirements on AIS devices because

^{15/} 47 C.F.R. § 1.429(b)(2). *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Moncks Corner, Kiawah Island, and Sampit, South Carolina), Memorandum Opinion and Order*, 15 FCC Rcd 8973 ¶ 12 (2000) (Section 1.429 “allows new matters not previously presented to the Commission to be considered if the Commission finds that such consideration is in the public interest.”); *Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations, Memorandum Opinion and Order*, 14 FCC Rcd 6974 ¶ 9 (1999) (affirming that the FCC has the authority to reconsider new facts).

^{16/} *Sixth Report and Order* ¶ 70; 47 C.F.R. § 80.207 n.20.

of “the importance of AIS as a navigational and safety tool, and the international acceptance of IEC 61993-2.”^{17/}

However, this rationale is flawed. As an initial matter, the FCC cannot simply cede its authority over spectrum utilization matters to an international conference as it has done here, but rather “must exercise its own judgment as to what regulations are necessary for these purposes.”^{18/} While MariTEL recognizes that it is often beneficial for the FCC to follow international standards, it is not required to do so, particularly when following those standards will prejudice domestic spectrum use.^{19/} Indeed, in an earlier phase of this proceeding, the FCC specifically declined to follow international allocation policies that would prejudice U.S. spectrum use.^{20/}

B. The Sixth Report and Order Improperly Appears to Pre-Judge the Designation of AIS Channels

The FCC recently initiated a Notice of Proposed Rule Making to address the channels that may be designated for AIS use in the United States.^{21/} In that proceeding, the FCC proposes, *inter alia*, to designate MariTEL’s channel 87B for AIS use. However, that proposal remains pending; indeed, the deadline for the submission of comments has not yet past. Because the FCC

^{17/} *Sixth Report and Order* ¶ 70.

^{18/} *Amendment of Parts 2 and 25 to Implement the GMPCS MOU and Arrangements, Second Report and Order*, 18 FCC Rcd 24423 ¶¶ 50-51 (2003) (rejecting suggestions that the FCC simply approve all equipment approved by the International Telecommunication Union because “[t]he Commission has a statutorily-mandated responsibility to serve the public interest in preventing harmful interference and minimizing RF radiation hazards”).

^{19/} *Id.*

^{20/} *See Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 n.157 (1998) (“Third Report and Order”).

^{21/} *Amendment of the Commission’s Rules Regarding Maritime Automatic Identification Systems Petition for Rule Making Filed by National Telecommunications and Information Administration Emergency Petition for Declaratory Ruling Filed by MariTEL, Inc., Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 19 FCC Rcd 20071 (2004) (“AIS Order”).

has not yet addressed the channels that will be used for AIS, the Sixth Report and Order improperly suggests that channels have already been designated for AIS. While not explicit, the suggestion of designation is based on the Commission's reliance on international standards. Those standards plainly consider channels 87B and 88B to be designated for AIS. More importantly, the international equipment standards specify that the default settings on AIS equipment shall permit operations on channels 87B and 88B. The fact that the Sixth Report and Order may be misconstrued is further evidenced by the FCC's issuance of equipment authorizations that specifically reference operations on channels 87B and 88B.^{22/} While those equipment authorizations were issued prior to the effective date of the rules adopted in the Sixth Report and Order (but instead were issued pursuant to the FCC's Public Notice 02-1499), it is reasonable to expect that new equipment authorizations will continue to bear this legend.

Therefore, in order to preserve the propriety of its on-going rule making proceeding, the FCC must make clear on reconsideration that it has not yet, notwithstanding, designated channel 87B for AIS use. The lack of clarity on this issue will, among other things, result in deleterious effects to equipment manufacturers who wish to produce equipment for the U.S. market, and who might incorrectly interpret the Sixth Report and Order as approving the use of channel 87B for AIS operations. In order to correct the misimpression created by the Sixth Report and Order, the FCC should ensure that future equipment authorizations require manufacturers to notify customers that the equipment may need to be manually tuned to channels other than 87B in the future, once the FCC affirmatively

^{22/} See, e.g., Furano USA Inc., FCC Grant of Equipment Authorization (granted 3/26/2003), available at <http://www.fcc.gov/oet/fccid/>; Japan Radio Co., Ltd, FCC Grant of Equipment Authorization (granted 6/17/2003), available at <http://www.fcc.gov/oet/fccid/>; Kongsberg Seatex AS; FCC Grant of Equipment Authorization (granted 7/2/2003), available at <http://www.fcc.gov/oet/fccid/>; Leica MX-Marine, FCC Grant of Equipment Authorization (granted 5/7/2003), available at <http://www.fcc.gov/oet/fccid/>.

addresses the issue of spectrum that will be designated for AIS use in the U.S.^{23/} Similarly, customers should also be notified that pending the outcome of the FCC's currently pending proceeding, the use of channel 87B by AIS devices may be ineffective due to potentially competing uses by MariTEL and incumbent licensees.^{24/}

III. CONCLUSION

MariTEL, Inc. hereby submits the foregoing Petition for Reconsideration and asks that the FCC reverse its decision to permit the approval of AIS equipment based on international standards and take other such actions consistent with the views expressed herein.

Respectfully submitted,

MariTEL, Inc.

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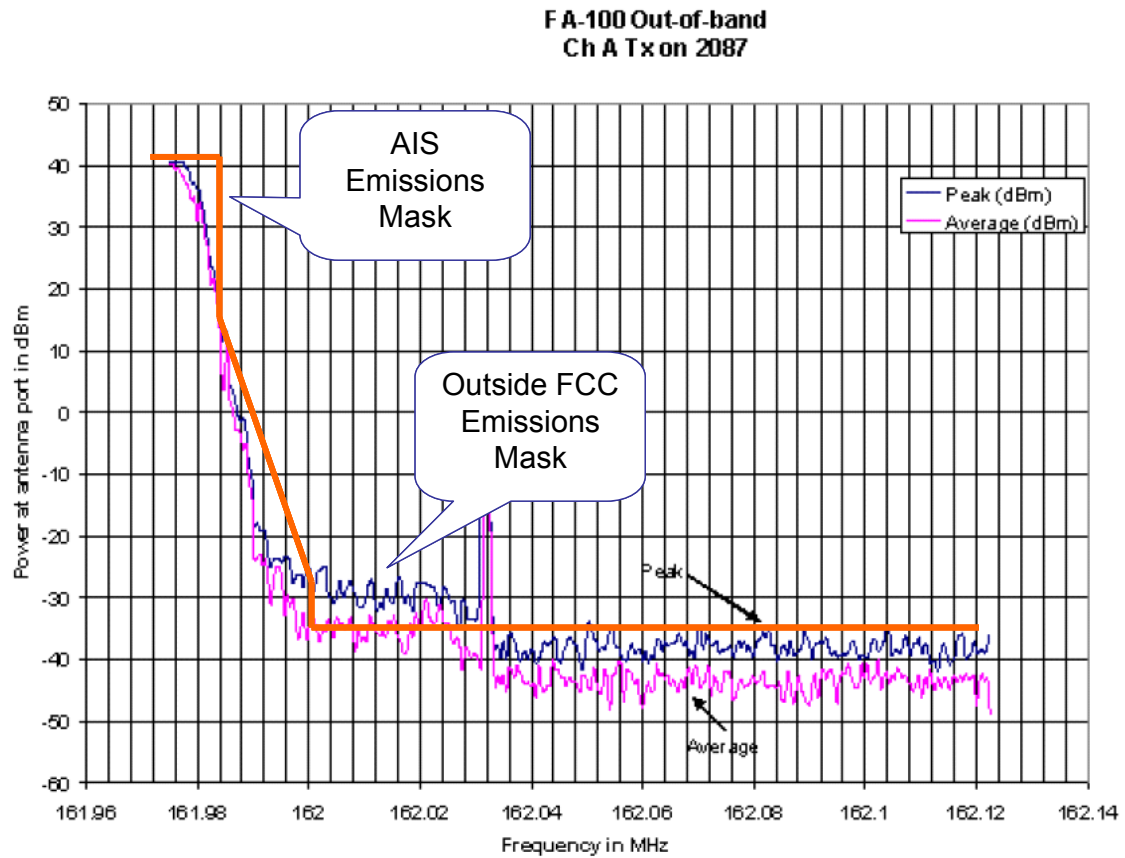
^{23/} MariTEL recognizes that the FCC has issued a public notice that allows the use of shipborne AIS equipment under a ship's existing authorization. See "Wireless Telecommunications Bureau Announces Use of an Additional Frequency for the United States Coast Guard's Ports and Waterways Safety System." *Public Notice*, DA02-1362 (rel. June 13, 2002). However, those devices will not be permitted to be used on channel 87B on a permanent basis (as they are otherwise programmed to operate in a default mode) unless the FCC designated channel 87B for AIS use.

^{24/} MariTEL believes that AIS shipborne stations may not properly operate on channel 87B without the permission of MariTEL or an incumbent licensee in any case. With respect to MariTEL, any such authority was premised on a Public Notice, which in turn was premised on MariTEL's Memorandum of Agreement with the United States Coast Guard, which was subsequently terminated. See AIS Order at n.145.

Exhibit A

Comparison of TX Emissions vs. FCC AIS Emissions Mask

For two Type Accepted AIS Devices



AIMS M1V – Out-of-band TX Channel 2087

